

ORDER BELOW EXH.49 IN Spl.(Atr.) Case No. 06/2011

1- The present application is moved by the complainant with a prayer for adding section 3(1) (v) of the SC ST (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said section of the said Act') against the accused as the said section was not added by the police against the accused while filing the charge sheet. The complainant filed on record below Exh.51 the 7/12 extract of the land situated in gut no. 314 of village Penur. The said 7/12 extract reflects that, the said gut no. 314 is admasuring 2 H. and all of the land in said gut is owned by Bhaurao Motiram i.e. the present complainant.

2- The say of the APP was called along with the say of defence. The learned APP stated that, as per the investigation papers the said section needs to be added against the accused.

3- Heard all the parties. The learned APP in his argument submitted that, as per the contents of the FIR the accused had interfered in the enjoyment of the right of the complainant over his land in gut no. 314 situated at village Penur Tq. Loha, Dist. Nanded. He submitted that, the the employees of a construction company namely Rajdeep Buildcon Pvt. Ltd. were extracting 'Murum' (मुरुम) from the land of the complainant and when he opposed them the accused assaulted him by uttering filthy words to him and threatening to kill him. Therefore, the accused be kindly charged under the said section of the said Act', along with other sections which are mentioned in the charge sheet.

4- The learned Advocate for the accused vehemently opposed the present application during his arguments. He submitted that, the contents of the FIR even if taken, at their face value did not constitute any offences under The SC ST (Prevention of Atrocities) Act, 1989. He submitted that, the complainant had no right to move the present application and the power to add or alter charge against the accused was only vested with this court on the basis of material available on record. He submitted that, when no material under any of the sections of the said Act was available on record then the present application was liable to be rejected.

5- He relied on the judgment of the Hon'ble Supreme Court in the matter of *P. Kartikalalaxmi Vs. Shri. Ganesh reported in (2017 Vol. 3 SCC 347)*. He submitted that, the Hon'ble Supreme Court had held in para no. 6 of the said judgment that, the power to alter or add any charge at any stage was only vested with the court and no party had a right to seek for such addition or alteration by filing any application as a matter of right. Therefore, in view of the said ratio of the Hon'ble Supreme Court the present application be kindly rejected.

6- I have perused the judgment of the Hon'ble Supreme Court passed in the matter of P. Kartikalalaxmi (supra). It was observed by the Hon'ble Supreme Court that, there is no right in any party to move an application for addition or alteration of charge as a matter of right. It was further observed that, "if there was an omission in the framing of the charge and if it comes to the knowledge of the court trying the offence, the power is always vested in the court as provided under

section 216 of the Cr. P. C. to either alter or add the charge and that, such power is available with the court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies which comes to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

7- I have perused the FIR and record of the present matter. The matter is pending for evidence since long. That, my predecessor had framed charge against the accused on 11-03-2015 below Exh.38. The accused were charged under section 341, 324, 504, 506 r/w. 34 of the IPC and section 3 (1) (x) of 'the said Act'.

8- The contents of the FIR dated 18-07-2010 reflects that, the complainant had stated that, his caste is 'Mang' and he is a resident of village Penur. He only alleged that, the employees of a construction company namely Rajdeep Buildcon Pvt. Ltd. were extracting 'Murum' (मुरुम) from his land situated in gut no. 314 of village Penur and when he opposed them the accused assaulted him by uttering filthy words to him and threatening to kill him. The complainant has nowhere stated in his complaint that, because he belonged to the said caste the accused had committed the alleged offences against him. Therefore, prima facie, at this stage, there are no ingredients in the FIR to additionally charge the accused with 'the said section of the said Act'.

9- I have perused the judgment of the Hon'ble Supreme Court passed in the matter of P. Kartikalalaxmi (supra). It was observed by the Hon'ble Supreme Court that, "there is no right in any party to move an application for addition or alteration of charge as a matter of right. It is an enabling provision for the court to exercise its power under certain contingencies which comes to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law."

10- Thus, the ratio laid down by the Hon'ble Supreme Court is applicable to the present matter and the complainant or the prosecution cannot claim a right to move the present application. There are no ingredients to charge the accused under 'the said section of the said Act'. Hence, I proceed to pass the following order.

ORDER

Application is rejected and disposed off.

Sd/-

Date: 25-10-2018

(V. S. Gaike)
Addl. Sessions Judge, Kandhar.

CERTIFICATE

I affirm that the contents of this PDF judgment /order
are same word to word as per the original order.

Name of the Stenographer:- A. M. Onkare.

Court Name:-District Judge-1 & Additional Sessions Judge, Kandhar

Date:- 25-10-2018

Judgment/order signed by the Presiding Officer On:- 25-10-2018

Judgment/order uploaded on :- 29-10-2018